

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 20001
[REDACTED],	)	
	)	DECISION
Petitioners.	)	
_____	)	

[Redacted] (petitioners) protest the Notice of Deficiency Determination issued by the auditor for the Idaho State Tax Commission (Commission) dated December 11, 2006. The Notice of Deficiency Determination asserted additional liabilities for Idaho income tax, penalty, and interest in the total amounts of \$32,463 and \$39,882 for 2004 and 2005, respectively.

The petitioners filed their 2004 and 2005 Idaho income tax returns as nonresidents of Idaho. They claimed a credit for taxes paid to another state on both of these returns.

The auditor did not make adjustments to the Idaho taxable income reported by the petitioners or to their filing status as nonresidents. He disallowed the credit for taxes paid to another state and asserted a five percent negligence penalty and statutory interest. The auditor explained that the credit was not allowed to a taxpayer who was not domiciled in the state of Idaho. Idaho Code § 63-3029 (2004) stated in part:

Credit for income taxes paid another state or territory. -- (1) A resident individual shall be allowed a credit against the tax otherwise due under this chapter for the amount of any income tax imposed on the individual, an S corporation, partnership, limited liability company, or trust of which the individual is a shareholder, partner, member, or beneficiary (to the extent attributable to the individual as a result of the individual's share of the S corporation's, partnership's, limited liability company's or trust's taxable income in another state), for the taxable year by another state on income derived from sources therein *while domiciled in Idaho* and that is also subject to tax under this chapter. (Emphasis added.)

The petitioners concede that “Idaho Code Section 63-3029(9) does not provide a tax credit for taxes paid to other states during the period the taxpayer is not domiciled in Idaho . . . .” They go on to propose another method of calculating their Idaho taxable income. This alternative approach was not included in either the petitioners’ computation of their Idaho taxable income in their original Idaho income tax return or in the auditor’s computation of the amounts due for the Notice of Deficiency Determination referred to above. The petitioners assert that, pursuant to their alternative computation of their income, they are due refunds for both 2004 and 2005.

Idaho Income Tax Administrative Rule 880 stated (2004) in part:

02. Timely Claim Required For Refund. (3-20-97)

a. The Tax Commission may not credit or refund an overpayment after the expiration of the period of limitations unless the taxpayer filed a claim before the expiration of the period.

(3-20-97)

b. The claim for a credit or refund must be in writing and set forth each legal or factual basis in sufficient detail to inform the Tax Commission of the basis of the claim. The Tax Commission may require a taxpayer to submit a written declaration that the claim for refund is true and correct to the best of his knowledge and belief and is made under the penalties of perjury.

(3-20-97)

For 2005, Idaho Income Tax Administrative Rule 880 stated, in part:

03. Amended Returns Required as Refund Claims. The claim for a credit or refund must be made on an amended Idaho income tax return that is properly signed and includes an explanation of each legal or factual basis in sufficient detail to inform the Tax Commission of the reason for the claim. By signing the amended return the taxpayer shall be declaring that the claim for refund is true and correct to the best of his knowledge and belief and is made under the penalties of perjury.

(4-6-05)

As to the petitioners' proposed alternative computation of their Idaho taxable income, the Commission finds that the issue is not ready for a decision as the petitioners have not yet filed proper claims for these refunds. Therefore, the Commission will restrict this decision to addressing the adjustments made by the auditor as reflected in the Notice of Deficiency Determination dated December 11, 2006.

The petitioners have indicated that they agree that Idaho Code § 63-3029(9) does not provide for the credit for taxes paid another state to be available to persons not domiciled in Idaho. However, they contend that their income should be computed pursuant to Idaho Code §§ 63-3027 and 63-3701. As this latter issue is not ready for a decision, the Commission finds that the auditor's adjustment must be affirmed.

WHEREFORE, the Notice of Deficiency Determination dated December 11, 2006, is hereby APPROVED, AFFIRMED, AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioners pay the following tax, penalty, and interest (computed to March 31, 2007):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2004	\$27,910	\$ 674	\$ 5,308	\$ 33,892
2005	36,165	759	4,708	<u>41,632</u>
				<u>\$ 75,524</u>

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the petitioners' right to appeal this decision is enclosed with this decision.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2008.

IDAHO STATE TAX COMMISSION

---

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 2008, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]  
[Redacted]  
[Redacted]

Receipt No.